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RECORD, CASE No. 14,281.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~870~~. 542 258

VANDY M. WEST, PLAINTIFF IN ERROR,

vs.

WILLIAM L. CABELL, JAMES MARONEY, PHILIP SANGER, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 14, 1890.

RECORD, CASE No. 14,281.

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TERM No., 870.

VANDY M. WEST, PLAINTIFF IN ERROR,

vs.

WILLIAM L. CABELL, JAMES MARONEY, PHILIP SANGER, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 10, 1891.

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1 *Caption.*

At a term of the circuit court of the United States in and for the fifth circuit thereof and the northern district of Texas, at Dallas—present and presiding the Honorable A. P. McCormick, United States district judge—and which term convened on the 13th day of January, 1890, and adjourned on the 28th day of February, 1890, the following cause, among others, came on for trial, to wit:

V. M. WEST
vs.
W. L. CABELL *et al.* } No. 1155.

2 STATE OF TEXAS,
County of Parker.

To Hon. G. A. McCall, dist. judge:

Your petitioner, V. M. West, a resident citizen of Palo Pinto county, Texas, complaining of William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, all of whom are resident citizens of Dallas county, Texas, alleges that heretofore, to wit, on the 28th day of April, 1886, said William L. Cabell was duly appointed and commissioned marshal of the United States for the northern district of Texas; and thereafter, on, to wit, the 19th day of May, 1886, said Cabell, as p-incipal, with said other defendants as sureties, made and executed a certain bond as such marshal in the sum of twenty thousand dollars, in compliance with the statutes of the United States, which bond was on said last-named day and date duly approved by Hon. A. P. McCormick, U. S. dist. judge, the condition of which bond is as follows: "Now, if the said William L. Cabell, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue;" and thereafter, on, to wit, — day of ——, 1886, one E. W. Johnson was duly appointed and qualified as one of the deputies of said W. L. Cabell, marshal; and thereafter, on, to wit, the 16th day of August, 1887, said Johnson, while so qualified and acting as deputy marshal as aforesaid, did, at the county of Parker, State of Texas, unlawfully detain and falsily imprison plaintiff, against his consent, under some sort of warrant, copias, or other process of law, which did not authorize the arrest of plaintiff, but which commanded the arrest of one James West on a charge of murder, who was and is a totally different
3 person from plaintiff.

When so arrested unlawfully, plaintiff, who lived at Mineral Wells, in Palo Pinto county, Texas, had come to Weatherford in his wagon on business, with his little boy, about 6 years old, leaving his wife alone at Mineral Wells, and expected to return home the next day; but said Johnson not only arrested him without lawful authority so to do, and wrongfully, but also put irons and handcuffs on plaintiff and carried him as a felon, charged with murder, to Graham,

in Young county, Texas, about sixty miles from Weatherford and forty miles from plaintiff's home, and there incarcerated and falsely imprisoned plaintiff in the county jail of Young county for three weeks and two days, when he was released without a trial.

Plaintiff alleges that said false arrest and imprisonment caused him great mental suffering and mortification, as well as bodily pain, and operated a serious detriment to his health, in this: that he was afflicted with a disease called rheumatism, and had come from the State of Colorado to Mineral Wells for his health, and was improving from said disease, but said imprisonment caused a relapse of his pain and suffering, and in consequence he was confined to his bed for one month thereafter and caused great bodily pain and anguish.

Plaintiff further alleges that he was put to $500.00 of expense in consequence of said false arrest and imprisonment; and he also alleges that said arrest and imprisonment was not only illegal but without probable cause, and especially so in that he was imprisoned in jail for one week after a credible person had made affidavit to said deputy marshal that plaintiff was not the man called for in said warrant or capias, but was a wholly different person. Wherefore

4 plaintiff alleges that there has been a breach of said bond, and that by reason of the facts above alleged said marshal and his sureties are liable to plaintiff on said bond for damages in the sum of, to wit, ten thousand dollars, and therefore he sues and prays that the defendants be duly cited, and that he have judgment for his damages and costs and for general relief.

HOOD & STEPHENS,
Attorneys for Plaintiff.

The foregoing is endorsed as follows, to wit: No. 2409. V. M. West *vs.* W. L. Cabell and others. Original petition. Filed November 5th, 1887. M. V. Kinnison, clerk.

5 The State of Texas to the sheriff or any constable of Dallas county, Greeting:

You are hereby commanded to summon William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell and John D. Norry to appear before the honorable district court of Parker county, Texas, at the next regular term thereof, to be holden at the court-house, in the town of Weatherford, on the second Monday in November, A. D. 1887, then and there to answer the plaintiff's petition filed in a suit in said court on the 5th day of November, A. D. 1887, wherein V. M. West is plaintiff and William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell and John D. Norry are defendants—

File number of said suit being No. 2409.

The nature of the plaintiff's demand is as follows, to wit:

A suit on the official bond of William L. Cabell as United States marshal, as principal, and the other defendants as his sureties, for damages in the sum of ten thousand dollars for false imprisonment

by one E. W. Johnson, a deputy marshal under the said William L. Cabell (the time, manner, and circumstances of such imprisonment being fully set forth in a certified copy of plaintiff's petition, accompanying this writ). Plaintiff prays judgment for the said sum of ten thousand dollars, costs, general relief, *&etc.*

And you will deliver to said defendants, William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell and John D. Norry, each in person, a true copy of this citation, together with the accompanying certified copy of plaintiff's petition.

Herein fail not, and have you before said court this writ, with your endorsement thereon showing how you have executed the same.

6 Given under my hand and seal of said court, at office, in Weatherford, this 5th day of November, A. D. 1887.

Attest: [SEAL.] M. V. KINNISON,
Clerk District Court, Parker County, Texas,
By —— ——, *Deputy.*

Sheriff's Return.

Came to hand the 8th day of November, A. D. 1887, at 9 o'clock a. m., and executed the 8th day of November, A. D. 1887, by delivering to William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, Frank M. Cockrell (Jno. D. Harry not found in Dallas county), the within-named defendants, each in person, a true copy of this writ, together with the accompanying certified copy of plaintiff's petition.

Fees:

Serving 7 copy	$10 50
Mileage	50
Total	$11 00

Paid.

W. H. LEWIS,
Sheriff Dallas County, Texas,
By D. R. COE, *Deputy.*

The foregoing is endorsed as follows, to wit: File No. 2409. District court, Nov. term, 1887. V. M. West *vs.* W. L. Cabell and others. Citation. Issued 5th of November, 1887. M. V. Kinnison, clerk.

7 THE STATE OF TEXAS, }
County of Parker. }

In the District Court of Parker County, Texas.

V. M. WEST
vs.
W. L. CABELL *et al.*, Defendants. } No. 2409.

To the Hon. George A. McCall, judge of the said court:

And your petitioners, W. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, all of whom are resident citizens of Dallas county, Texas, and inhabitants of the northern district of Texas, and were when this suit was filed, respectfully show that they are the defendants in the above entitled and numbered cause, and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of two thousand dollars. They would further show that said suit is one of a civil nature at law and against said W. L. Cabell, as principal, and said James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, as sureties upon the official bond of the said W. L. Cabell as United States marshal for the northern district of Texas, and that said bond was executed in pursuance of and in compliance with the statutes of the United States, and that therefore the same is a suit arising under the laws of the United States.

And your petitioners offer herewith a bond, with good and sufficient surety, for their entering in the circuit court of the United States for the northern district of Texas, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold
8 that this suit was wrongfully or improperly removed thereto; and they pray this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the northern district of Texas; and they will ever pray.

BROWN, WATTS & HALL & B. G. BIDWELL,
Attorneys for Petitioners, W. L. Cabell et al.

THE STATE OF TEXAS, }
County of Parker. }

I, —— ——, being duly sworn, do say that I am one of the attorneys for the petitioners in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations contained therein are true as I verily believe.

—— ——.

Sworn to and subscribed before me, —— ——, on this — day of November, 1887.

—— ——.

The foregoing is endorsed as follows, to wit: No. 2409. V. M. West *vs.* W. L. Cabell *et al.* Petition for removal to U. S. court. Filed 12th of November, 1887. M. V. Kinnison, clerk.

9 THE STATE OF TEXAS, }
County of Parker. }

I, M. V. Kinnison, clerk of the district court within and for Parker county, State of Texas, do certify that the above, foregoing, and hereto attached paper is a true and correct copy, transcript, and record of the original papers in the cause of V. M. West *vs.* W. L. Cabell and others, No. 2409 on the district court docket of said county, now pending in said court.

Witness my official signature and seal of office, at office, [SEAL.] in Weatherford, this 14th day of November, 1887.

M. V. KINNISON,
Clerk D. C., P. C.

The foregoing is endorsed as follows, to wit: No. 1155. V. M. West *vs.* W. L. Cabell and others. Transcript. From Parker county. Filed November 21st, 1887. J. H. Finks, clerk. Filed December 15th, 1887. A. J. Houston, clerk, by Jas. D. Adams, deputy.

10 *Bill of Costs.*

V. M. WEST, Plaintiff,
vs.
W. L. CABELL and Others, Defendants. } No. 2409.

To officers of court Dr. to costs accrued in above-entitled cause to beginning of November term, 1887.

Clerk's fees:

Docketing, .20; filing, .15	35
Appear. of plaintiff	15
Tax cost & copy	25
Iss'g orig. citation	75
Iss'g 8 copies citation, .75	$6 00
Rec. off. ret. on citation	75
8 cop. pl'ff's petition, $1.50	12 00
Filing removal petition	15
Filing removal bond	15
Admin. 1 oath	25
Circuit court	3 75
Total	$24 55

Sheriff's fees:

Jury fee	50
Serving 7 copies citation, $1.50	$10 00
Sheriff's mileage	50
Total sheriff's fee	$11 00
Total clerk's fee	24 55
Total costs	$35 55

11 THE STATE OF TEXAS,
County of Parker.

In District Court, Parker County.

I, M. V. Kinnison, clerk of the district court in and for said county and State, hereby certify the above to be a correct account of the costs in above entitled and numbered suit up to this date.

Given under my hand and official seal the 14th day of Nov., A. D. 1887.

M. V. KINNISON,
Clerk Dist. Court, Parker County.

12 In District Court, Parker County, Texas.

V. M. WEST
—
W. L. CABELL *et al.* } No. 2409.

Know all men by these presents that we, W. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank Cockrell, as principal-, and —— —— and —— ——, *in* as sureties, are held and firmly bound unto V. M. West in the sum of two hundred and fifty dollars; the payment whereof, well and truly to be made unto the said V. M. West, his heirs and assigns, we bind ourselves, our heirs, representatives, jointly and severally, firmly by these presents, yet upon these conditions: The said W. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell having petitioned the district court of Parker county, State of Texas, for the removal of the above entitled and numbered cause to the circuit court of the United States in and for the northern district of Texas:

Now, if we, the said W. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, shall enter in the said circuit court of the United States for the northern district of Texas, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

Witness our hands this 11th day of November, A. D. 1887.

13 W. L. CABELL.
J. B. HOPKINS.
W. L. GREGGS.
JAMES MORONEY.
PHILIP SANGER.
C. M. TERRY.
FRANK M. COCKRELL.
JOHN D. HARRY.
E. M. TILLMAN.
J. C. BOGEL.

The foregoing is endorsed as follows, to wit: V. M. West *vs.* W. L. Cabell and others. Bond for removal to U. S. court. Filed 12th day of November, 1887. M. V. Kinnison, clerk.

14 In the United States Circuit Court, at Waco, Texas.

V. M. WEST
vs.
W. L. CABELL *et als.*

In this case the defendants, W. L. Cabell, Jas. Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, Frank M. Cockrell, and Jno. D. Harry, respectfully state that they are the only defendants in this case; it was filed against them by plaintiff, West, in the district court of Parker county, Texas, Nov. 5th, 1887, and has been by them removed to this court.

They are, each of them (and were when this suit was filed), residents and citizens of Dallas county, Texas.

Process from this court to said county is returnable by law to the Dallas, Texas, branch of this court.

The plaintiff is a resident and citizen of Palo Pinto county, Texas. There has not been any default against them, and now, upon first appearing in this court, they present this their application, sworn to, and pray that this suit may be removed to the Dallas branch of this court for trial.

BROWN, WATTS & HALL & B. G. BIDWELL,
Attorneys for the Defendants, W. L. Cabell —.

Subscribed and sworn to before me by W. L. Cabell this Nov. 21st, 1887.

J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

15 The foregoing is endorsed as follows, to wit: No. 1155. V. M. West *vs.* W. L. Cabell *et als.* Motion to transfer to Dallas. Filed Nov. 21st, 1887. J. H. Finks, clerk, by Chas. H. Lednum, deputy. Filed Dec. 15th, 1887. A. J. Houston, clerk, by Jas. D. Adams, deputy.

16 In the Circuit Court of the United States for the Fifth Circuit and Northern District of Texas, at Waco.

From the minutes of said court, November term, 1887.

Present and presiding: The Honorable A. P. McCormick, U. S. dist. judge.

When and where the following proceedings were had and done:

V. M. WEST
vs.
W. L. CABELL *et als.* } 362.

NOV. 28TH, 1887.

On this day came to be heard the motion of the defendants herein to transfer this cause to the branch of this court held at Dallas, and the court, having heard and considered said motion, grants the same. It is therefore ordered by the court that the clerk of this court forward to the clerk of the circuit court, at Dallas, Texas, all the original papers filed in this cause, together with a certified copy of all orders taken herein.

UNITED STATES OF AMERICA,
Fifth Circuit and Northern District of Texas, } *ss:*

I, Jno. H. Finks, clerk of the circuit court of the United States in and for the northern district of Texas, at Waco, do hereby certify the writing hereto annexed to be a true copy of the order transferring to Dallas, in case No. 362, of V. M. West, plaintiff, against W. L. Cabell *et als.*, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Waco,
17 [SEAL.] in said district, this 14th day of Dec., in the year of our Lord eighteen hundred and eighty-seven, and of the American Independence the 112th year.

J. H. FINKS,
Clerk of said Court,
By CHAS. H. LEDNUM, *Deputy.*

The foregoing is endorsed as follows, to wit: No. 1155. No. 362. United States circuit court, northern district of Texas, at Waco. V. M. West against W. L. Cabell *et als.* Duly certified copy of the order of transfer in the above-entitled cause. Filed Dec. 15th, 1887. A. J. Houston, clerk, by Jas. D. Adams, deputy.

18 In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

V. M. WEST
vs.
W. L. CABELL *et al.* } No. —.

Now comes the defendants, W. L. Cabell, James Moroney, Chas.

M. Terry, Frank M. Cockrell, Philip Sanger, Emanuel M. Tillman, Julius C. Bogel, and John D. Harry, and leave of the court being first had and obtained for that purpose, and cause to be filed herein this their first amended original answer in lieu and to take the place of their original answer filed in this cause, to wit, the — day of November, 1887.

For and by way of amendment they demur to plaintiff's petition in this cause, and say that the same is not sufficient in law to entitle the plaintiff to any recovery whatever against them, and of this they pray the judgment of the court.

For answer herein the defendants deny all and singular the allegations in plaintiff's said petition contained, and of this they put themselves upon the count-y.

Second. And, further answering, these defendants here abandon all the averments contained in their original answer herein with reference to the capias or warrant under which the said plaintiff was arrested and as to his being indicted in the circuit court of the United States for the western district of Arkansas, and aver the truth to be that said E. W. Johnson, as such deputy United States marshal, made such arrest and detained said plaintiff by virtue of a legal and valid warrant or writ duly issued by Francis W.
19 Girand, a United States commissioner, at Graham, in and for said northern district of Texas, upon a legal affidavit charging said plaintiff with the crime of murder in the Indian Territory and within the jurisdiction of the said circuit court of the United States for the western district of Arkansas.

Third. And, further answering, the defendant W. L. Cabell avers that about the 22nd day of June, 1886, he appointed said E. W. Johnson deputy marshal of the United States for the northern district of Texas; that at said date said Johnson, as such deputy marshal, as principal, together with J. G. Hill and J. E. Crain, as sureties, executed and delivered to this defendant his certain bond or writing obligatory in the sum of three thousand dollars, conditioned, among other things, that said Johnson would legally, fairly, honestly, and faithfully perform, execute, and discharge all the duties of said office of deputy marshal and all acts or things appertaining thereto or connected therewith, and also said Johnson, as such deputy, would in all things and at all times indemnify and save harmless this defendant for touching and in anywise concerning the due execution and return of all writs and process that shall come to the hands of the said E. W. Johnson as such deputy marshal, and also from the payment of all damages, costs, trouble, counsel, charges, and expenses with which the said W. L. Cabell may be charged, subject to, or in any manner liable to pay for on account of or by reason of any act or thing of the said E. W. Johnson in relation to the said office of deputy marshal, either of omission or commission or otherwise.

This defendant avers that said E. W. Johnson, J. G. Hill, and J. E. Crain are each and all resident citizens of the county of
20 Young and State of Texas, the same being within the northern district of Texas.

Wherefore he prays that said E. W. Johnson, J. G. Hill, and J. E. Crain be cited to appear, answer, and defend in this cause, and, in the event the plaintiff should recover anything against this defendant and the sureties on his official bond, that then he prays judgment over against said Johnson, Hill, and Crain for a like amount, and for costs of suit and general relief, & etc.

BROWN, WATTS & HALL,
Att'ys for W. L. Cabell et al., Defendants.

The foregoing is endorsed as follows, to wit: No. 1155. V. M. West *vs.* W. L. Cabell *et al.* First amended original answer. Filed Jan'y 9th, 1888. A. J. Houston, clerk, by Jas. A. Adams, deputy.

21 In the United States Circuit Court for the Northern District of Texas, at Dallas.

The President of the United States of America to M. D. Wallace, Greeting:

You are hereby commanded to summon J. G. Hill, a resident citizen of the county of Young, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next regular term thereof, to be holden for the fifth judicial circuit and northern district of Texas, at the court-room thereof, in the city of Dallas, on the 3rd Monday, it being 21st day, of May next, to answer the petition in case No. 1155, filed on the 9th day of January, 1888, of V. M. West, plaintiff, against W. L. Cabell, James Moroney, Chas. M. Terry, Frank M. Cockrell, Philip Sanger, Emanuel M. Tillman, Julius C. Bogel, and John D. Harry, defendants.

The nature of the plaintiff's demand is as follows, to wit:

To make E. W. Johnson, J. G. Hill, and J. E. Crain —, being sureties on Johnson's bond as deputy U. S. marshal, and said Johnson having made the arrest on which is based suit for damages.

For fuller statement see certified copy of 1st amended original answer, attached to copy of citation, of which you will serve the said Hill; also with the accompanying certified copy of said 1st amended original answer, and with a true copy of this writ.

Herein fail not and due return of this writ make on or before the 21st day of May next, showing how you have executed the same.

Witness the Honorable Samuel F. Miller, associate
[SEAL.] justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Dallas,
22 Texas, this ninth day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of American Independence the 112th year.

A. J. HOUSTON,
Clerk of said Court,
By JAS. A. ADAMS, *Deputy.*

No. 1155. U. S. circuit court, northern district of Texas, at Dallas. V. M. West *vs.* W. L. Cabell *et al.* Original citation to J. G. Hill, Young county. Issued on the 9th day of May, A. D. 1888. Houston, clerk. Returned and filed on the 21st day of May, 1888.

Marshal's Return.

Received this writ on the 15th day of May, 1888, and I executed the same on the 16th day of May, 1888, by delivering to the within-named defendant, J. G. Hill, in person, a certified copy of the petition in this case; also a true copy of this writ.

M. D. WALLACE.

Fee	$2 00
Mileage	50
Actual expense	
Total	$2 50

23 In the United States Circuit Court for the Northern District of Texas, at Dallas.

The President of the United States of America to M. D. Wallace, Greeting:

You are hereby commanded to summon E. W. Johnson, a resident citizen of the county of Young, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next regular term thereof, to be holden for the fifth judicial circuit and northern district of Texas, at the court-room thereof, in the city of Dallas, on the 3rd Monday, it being the 21st day, of May next, to answer the petition in case No. 1155, filed on the 9th day of January, 1888, of V. M. West, plaintiff, against W. L. Cabell, James Moroney, Chas. M. Terry, Frank M. Cockrell, Philip Sanger, Emanuel M. Tillman, Julius C. Bogel, and Jno. D. Harry, defendants.

The nature of the plaintiff's demand is as follows, to wit:

To make E. W. Johnson, J. G. Hill, and J. E. Crain parties defendant to this suit, Hill and Crain being sureties on Johnson's bond as deputy U. S. marshal, and said Johnson having made the arrest on which is based suit for damages.

For fuller statement see certified copy of 1st amended original answer, attached to copy of citation, of which you will serve the said E. W. Johnson; also with the accompanying certified copy of said 1st amended original answer, and with a true copy of this writ.

Herein fail not, and due return of this writ make on or before the 21st day of May next, showing how you have executed the same.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, and the seal of
24 [SEAL.] the circuit court thereof, at Dallas, Texas, this ninth day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of American Independence the 112th year.

A. J. HOUSTON,
Clerk of said Court,
By JAS. D. ADAMS, *Deputy.*

The foregoing is endorsed as follows, to wit: No. 1155. U. S. circuit court, northern district of Texas, at Dallas. V. M. West *vs.* W. L. Cabell *et al.* Original citation to E. W. Johnson, Young county. Issued on the 9th day of May, A. D. 1888. Houston, clerk.

Marshal's Return.

Received this writ on the 15th day of May, 1888, and I executed the same on the 16th day of May, 1888, by delivering to the within-named defendant, E. W. Johnson, in person, a certified copy of the petition in this case; also a true copy of this writ.

M. D. WALLACE.

Fee	$2 00
Mileage	
Actual expense	
Total	$2 00

25 In the United States Circuit Court for the Northern District of Texas, at Dallas.

The President of the United States of America to M. D. Wallace, Greeting:

You are hereby commanded to summon J. E. Crain, a resident citizen of the county of Young, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next regular term thereof, to be holden for the fifth judicial circuit and northern district of Texas, at the court-room thereof, in the city of Dallas, on the 3rd Monday, it being the 21st day, of May next, to answer the petition in case No. 1155, filed on the 9th day of January, 1888, of V. M. West, plaintiff, against W. L. Cabell, James Moroney, Chas. M. Terry, Frank M. Cockrell, Philip Sanger, Emanuel M. Tillman, Julius C. Bogel, and John D. Harry, defendants.

The nature of the plaintiff's demand is as follows, to wit:

To make E. W. Johnson, J. G. Hill, and J. E. Crain parties defendant to this suit, Hill and Crane being sureties on Johnson's bond as deputy U. S. marshal, and said Johnson having made the arrest on which is based suit for damages. For fuller statement see certified copy of first amended original answer attached to copy of citation, of which you will serve the said J. E. Crain; also with the accompanying certified copy of said 1st amended original answer, and with a true copy of this writ.

Herein fail not, and due return of this writ make on or before the 21st day of May next, showing how you have executed the same.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, and the seal of
26 [SEAL.] the circuit court thereof, at Dallas, Texas, this ninth day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of American Independence the 112th year.

A. J. HOUSTON,
Clerk of said Court,
By JAS. D. ADAMS, *Deputy.*

The foregoing is endorsed as follows, to wit: No. 1155. U. S. circuit court, northern district of Texas, at Dallas. V. M. West *vs.* W. L. Cabell *et al.* Original citation to J. E. Crain, Young county. Issued on the 9th day of May, A. D. 1888. Houston, clerk. Returned and filed on the — day of ——, A. D 18—.

Marshal's Return.

Received this writ on the 15th day of May, 1888, and I returned not executed the same on the 16th day of May, 1888, the within-named J. E. Crain not found after diligent search; said Crain is now living in Wyoming Ter.

M. D. WALLACE.

27 In U. S. Circuit Court, Northern District of Texas, at Dallas.

V. M. WEST
vs.
W. L. CABELL *et als.* } No. —.

Now comes the plaintiff, with leave of the court, and files an amended original petition in lieu of his original petition filed in district court of Parker county, Texas, on 5th day of November, A. D. 1887, and alleges that plaintiff is a resident citizen of Palo Pinto county, Texas, and was at the institution of this suit, and that defendants, William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, John D. Harry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, were at the institution of this suit and now are all resident citizens of Dallas county, Texas, and that all of said defendants have been duly cited, except John D. Harry, as to whom this suit is hereby discontinued because not cited.

Plaintiff alleges that heretofore, to wit, on the 28th day of April, 1886, said W. L. Cabell was duly appointed and commissioned marshal of the United States for the northern district of Texas, and thereafter, on, to wit, the 19th day of May, 1886, said Cabell, as principal, with said Moroney, Sanger, Terry, Harry, Tillman, Bogel, and Cockrell, as sureties, made and executed a certain bond, as such marshal, in the sum of twenty thousand dollars, in compliance with the statutes of the United States, which bond was on last-named day and date duly approved by the Honorable A. P. McCormick, U. S. dist. judge, the condition of which bond was and is as follows, to wit:

"Now, if the said W. L. Cabell, by himself and by his deputies, shall faithfully perform all the duties of said office of marshal, then this obligation to be void; otherwise to remain in full force
28 and virtue;" a certified copy of which bond is herewith filed, marked Exhibit "A," and made part hereof.

Plaintiff further alleges that thereafter, to wit, on or about 22nd day of June, A. D. 1886, said William L. Cabell duly appointed one E. W. Johnson, a resident citizen of Young county, Texas, deputy marshal of the United States in and for the northern district of

Texas, and said Johnson, being duly appointed as one of the deputies of said W. L. Cabell, marshal as aforesaid, was duly qualified as such and entered upon the duties of his said office, and has continued to act in that capacity ever since.

Plaintiff alleges that thereafter, to wit, on the 16th day of August, 1887, said E. W. Johnson, while so qualified and acting as deputy marshal of said Cabell as aforesaid, did, at the county of Parker, State of Texas, with farce and arms, unlawfully detain and falsely imprison plaintiff, V. M. West, against his consent, under a certain warrant, capias, or other process of law which did not authorize the arrest and imprisonment of plaintiff, which warrant, capias, or other process of law was and is in substance as follows, to wit:

"UNITED STATES OF AMERICA:

U. S. Commissioner's Court, Northern District of Texas, at Graham Sitting.

The President of the United States to the marshal of the northern district of Texas, Greeting:

You are hereby commanded to arrest the body of James West, he being charged by sworn affidavit made before me and filed against him at Graham, Texas, to wit, on the 18th day of July, 1887, that on or about the — day of ——, 1886, in the Indian country and western district of Arkansas, said above-named person
29 did unlawfully murder John Cameron, contrary to the statutes in such cases made and provided and against the peace and dignity of the United States, and him safely keep, and have you his body before me instanter, with this writ, showing how you have executed the same.

Witness F. W. Girand, U. S. commissioner, northern district of Texas, at Graham, this 18th day of July, A. D. 1887.

F. W. GIRAND,
U. S. Commissioner, Northern District of Texas."

Plaintiff alleges that said James West was and is a totally different person from plaintiff, and that plaintiff had neither committed nor was he accused of committing said murder, and said arrest and imprisonment *was* wholly unauthorized and illegal.

When arrested and imprisoned as aforesaid plaintiff was a resident citizen of the county of Palo Pinto, State of Texas, residing at Mineral Wells, in said county. On the day of said arrest plaintiff left his home at Mineral Wells, where he was engaged in merchantile business, and went to Weatherford, in Parker county, about twenty miles distant, on business, traveling in his wagon with his little son, about six years old, and expected to return home the next day, where he left his wife alone; and said Johnson, deputy marshal as aforesaid, under and by virtue of said warrant above, which authorized the arrest of James West only, and not this plaintiff, not only arrested plaintiff without lawful authority to do so and wrongfully, but also put irons and handcuffs on plaintiff, at Weatherford, in the presence of his little boy and others, to the great humiliation

and mortification of plaintiff, and carried him *there*, manacled as a felon charged with murder, to Graham, in Young county, Texas, a distance of over sixty miles from Weatherford and forty miles from plaintiff's home, through a sparcely settled country,
30 where there was no railroad or other transportation than by stage or private conveyance, and there falsely imprisoned plaintiff in a filthy jail for the space of three weeks and two days, when he was released without a trial.

Plaintiff alleges that when arrested and repeatedly during said false imprisonment he informed said Johnson that his name was not James West, and that he was not the person who committed said murder, and offered to show and prove to said Johnson that plaintiff was not the person mentioned in said warrant; all of which said Johnson disregarded and persisted in said false imprisonment, and made a false return on said warrant as follows, to wit: "Came to hand this 19th day of July, A. D. 1887, and I executed this 17th day of August, A. D. 1887, by arresting the within-named defendant at Weatherford and delivering him in open court, at Graham, Texas, before F. W. Girand, U. S. commissioner, and upon the same day committed him to jail upon this warrant. W. L. Cabell, U. S. marshal N. D. of T., by E. W. Johnson, deputy;" which return was and is false, in this: that said Johnson, deputy aforesaid, did not arrest the defendant named in said warrant, but arrested this plaintiff and falsely returned that he was the defendant named in said warrant, when in truth and in fact plaintiff was a wholly different person, as said Johnson well knew.

Plaintiff further alleges that said Johnson wrongfully procured the issuance of said warrant upon his own affidavit, without knowledge on his part, but only upon information that James West, and not this plaintiff, had committed said murder, and said Johnson, by virtue of said warrant, caused this plaintiff to be falsely imprisoned in said jail for, to wit, one week after the person upon
31 whose information he made said affidavit to procure said warrant had made affidavit to said deputy marshal that plaintiff was not the man called for in said warrant, but was a wholly different person. Wherefore plaintiff alleges that there has been a breach of said bond, and that said marshal and said deputy have not faithfully performed all the duties of the said office of marshal, as said defendants have bound themselves that they would do.

Plaintiff further alleges that by the answer filed herein by defendants they have notified and endorsed and undertaken to justify the above alleged acts and conduct of said Johnson. Wherefore defendants, by reason of the breach of said bond and by reason of the said ratification of the acts of said Johnson, are liable to plaintiff in the sum of, to wit, ten thousand dollars damages; for that plaintiff when arrested wrongfully, as aforesaid, was in delicate health, being afflicted with disease, to wit, rheumatism, on which account he had moved from the State of Colorado to Mineral Wells, Texas, and while at said Mineral Wells had begun to recover from said disease, and his pain and suffering on account of said disease had greatly decreased while at said Mineral Wells, and

he was rapidly improving in health when said illegal arrest and imprisonment were accomplished, as aforesaid, so much so that he was enabled to carry on a small retail business in merchandise at said Mineral Wells, and to derive a reasonable profit therefrom; but said wrongful arrest and unlawful confinement caused a return of his pain and suffering from said disease, and caused him to be confined to his bed for one month after being released from said imprisonment, and thereby his business was interrupted, and the value of his services and time wholly lost to him, and his
32 health permanently impaired.

Plaintiff further alleges that in order to secure his release from said false imprisonment he was forced to employ counsel and to pay out money therefor, and also to incurr other expenses, such as sending telegrams, sending for witnesses, the expense of his wife coming to see him to aid in securing his release, expenses for medical attention and treatment, and other reasonable expenses caused by and incidental to said false imprisonment, amounting in the aggregate, to wit, five hundred dollars of reasonable expense.

Plaintiff alleges that the loss sustained from interruption of business and loss of time and service amounts, to wit, two hundred and fifty dollars.

Plaintiff alleges that said false imprisonment, attended as it was by handcuffing and jail confinement, caused him great damage in the way of bodily and mental suffering, loss of reputation, indignity, and public digrace, aggregating, with the sums above alleged, fully ten thousand dollars actual damages, for which he sues and prays, as in his original petition, for judgment against defendants on said marshal's bond, as well as because of their ratification of said wrongs and injuries, for the full amount of said damages, to wit, ten thousand dollars actual damages, and for costs and general relief, & etc.

HOOD & STEPHENS,
Attorneys for Plaintiff.

The foregoing is endorsed as follows, to wit: No. 1155.
33 V. M. West *V. M. West vs.* W. L. Cabell *et al.* Amended original petition. Filed June 13th, 1888. A. J. Houston, clerk.

34 In U. S. Circuit Court, Northern District of Texas, at Dallas.

V. M. WEST
vs.
W. L. CABELL *et al.* } No. 1155.

In this cause plaintiff requests the court to charge the jury as follows:

You are instructed that a warrant for the arrest of James West will not authorize the arrest of Vandy M. West, though Vandy M.

West may have been the party intended, he not being named nor described in the warrant.

I. W. STEPHENS,
Attorney for Plaintiff.

Refused.

A. P. McCORMICK,
U. S. Dist. Judge.

The foregoing is endorsed as follows, to wit: No. 1155. Vandy M. West *vs.* W. L. Cabell *et al.* Charge No. 1 requested by plaintiff. Filed Feb'y 19th, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

35 In U. S. Circuit Court, Northern District of Texas.

V. M. WEST
vs.
W. L. CABELL *et al.*

Plaintiff requests the court to charge the jury as follows:

2nd. If through the fault of the marshal or his deputy, after plaintiff was placed in the Young county jail, in not using reasonable diligence to procure the attendance of witness Sturdevant, on whose information the warrant was procured, plaintiff was detained in jail an unreasonable length of time, the defendants would be liable.

3rd. If through the absence of said marshal and deputy, without a good and sufficient reason therefor, when said Sturdevant came and failed to identify plaintiff he was held an unreasonable length of time in jail, you will find defendants liable.

I. W. STEPHENS,
Attorney for Plaintiff.

Refused.

A. P. McCORMICK,
U. S. Dist. Judge.

The foregoing is endorsed as follows, to wit: Vandy M. West *vs.* W. L. Cabell *et al.* Charges No. 2 & 3 requested by plaintiff. Filed Feb'y 19th, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

36 V. M. WEST
vs.
W. L. CABELL *et al.* } 1155. Feb'y 20th, 1890.

On Feb'y 18th, 1890, this cause came on regularly for trial.

Plaintiff appeared in person and by attorney and says he will no further prosecute his said suit as to the defendant John D. Harry, not served herein. It is therefore considered by the court that the plaintiff, V. M. West, take nothing by this suit against John D. Harry, and that said defendant John D. Harry go hence without day and recover of plaintiff his costs in this behalf expended, and that he have his execution.

Came also the other defendants sued herein, by their attorney, and say that they will no further prosecute their cross-action herein against E. W. Johnson, J. G. Hill, and J. E. Crain. It is therefore considered by the court that said defendants, W. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, take nothing by their said cross-action, and that said E. W. Johnson, J. G. Hill, and J. E. Crain go hence without day, and that they have and recover of the said defendants above named their costs in this behalf expended, and that they have their execution.

Then the parties, by their attorneys, announced ready for trial; then came a jury of twelve good and lawful men, to wit, Lon Greene, J. A. Henderson, W. A. Robinson, J. A. Stewart, Wm. Noble, W. M. Humphreys, T. A. Pritchard, Frank Williamson, H. E. Steadman, Ed. Hovenkamp, E. J. Grantham, and W. L. Castleberry, who were duly and legally elected, empannelled, and sworn to try this
37 cause, who, after hearing the pleadings, evidence, arguments of counsel, and charge of the court, retired to consider of their verdict, and thereafter, on Feb'y 20th, 1890, returned into open court the following verdict, to wit: "We, the jury, find for the defendants—T. A. Pritchard, foreman." It is therefore considered by the court that plaintiff, V. M. West, take nothing by his suit herein, and that the said defendants, W. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and F. M. Cockrell, go hence without day and have and recover of and from the plaintiff, V. M. West, and J. W. Snyder, the surety on his cost bond, all costs by them in this behalf incurred and expended, and that they have their execution.

It is further ordered by the court that the officers of court and all parties entitled to costs do have and recover of and from said plaintiff and his surety and of and from said defendants the costs by them herein respectively incurred, and that execution issue therefore, in the name of the parties to this suit, for the benefit of such officers and other parties entitled to costs.

38 In U. S. Circuit Court, Northern District of Texas, at Dallas.

VANDY M. WEST
vs.
W. L. CABELL *et al.* } No. 1155.

In this cause comes now the plaintiff and moves the court to set aside the verdict and grant a new trial herein on the following grounds:

1st. The court erred in admitting the testimony of F. W. Girand and E. W. Johnson over the objection of plaintiff, as shown by bill of exceptions.

2nd. The court erred in charging the jury that defendants could justify the arrest of plaintiff under a warrant commanding the arrest of one James West, providing they believed the commissioner issuing the warrant intended to have plaintiff arrested.

3rd. The court erred in refusing the special charges requested by plaintiff.

I. W. STEPHENS,
Attorney for Plaintiff.

The foregoing is endorsed as follows, to wit: No. 1155. V. M. West *vs.* W. L. Cabell *et al.* Motion for a new trial. Filed Feb'y 20th, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

39 V. M. West
vs.
W. L. Cabell *et al.* } 1155.

Feb'y 20th, 1890.

On this day came on to be heard the motion of the plaintiff for a new trial herein, and the court, having heard and considered said motion and being fully advised as to the law, is of the opinion that said motion is not well taken.

It is therefore ordered and adjudged by the court that said motion be, and the same is hereby, overruled.

40 In Circuit Court U. S., Northern District of Texas, at Dallas.

V. M. West
vs.
W. L. Cabell *et al.* } No. 1155.

Bill of Exceptions.

Be it remembered that on the trial of this case the plaintiff introduced testimony tending to show that his name was Vandy M. West, and that he had never been known by any other name, and that he was, on the 16th or 17th day of August, 1887, arrested at Weatherford, Texas, by E. W. Johnson, who was a deputy United States marshal under W. L. Cabell, United States marshal for the northern district of Texas; that said arrest was made by virtue of a warrant issued by F. W. Giraud, United States commissioner at Graham, Texas, in said district, and that warrant commanded the arrest of James West, who stood charged, by affidavit, with the murder of John Cameron in the Indian Territory on the — day of ——, 1886.

That after his arrest he was conveyed by the deputy marshal, Johnson, to Graham, Texas, in Young county, and confined in the county jail of Young county for about three weeks, when he was released without a trial.

The defendant- then offered oral testimony tending to show that the warrant by virtue of which the arrest was made was issued for the arrest of the plaintiff, although by a wrong name.

And the defendants also offered testimony tending to show that E. W. Johnson, who made the affidavit against the plaintiff, had made inquiries from different sources concerning the identity of the plaintiff with the West who was charged with the commission of

murder in the Indian country; and also offered testimony
41 tending to show that the commissioner, upon the complaint made before him, issued the warrant in the name of James West, but intending it for the arrest of the plaintiff in this suit.

To the introduction of which testimony the plaintiff objected, first, because the pleadings of the defendant- would not justify the introduction of such testimony; 2d, because, if it was the intention of the commissioner who issued the warrant that the plaintiff should be arrested thereunder, that still, this being a suit for actual damages only, the proof was not admissible, and, 3rd, because it would not be competent, the warrant commanding the arrest of James West, to show, by parol testimony, that the plaintiff, who bore another name, was the individual for whose arrest the warrant was intended by the commissioner issuing it; all of which objections were overruled by the court, and the defendant- *was* permitted to introduce and did introduce testimony tending to establish the several propositions indicated over the objections of the plaintiff; to which rulings of the court the plaintiff excepted, and here tenders this bill of exceptions, and prays that the same be allowed and made a part of the record, which is done this 22 Febr'y, 1890.

A. P. McCORMICK,
U. S. Dist. Judge.

The foregoing has the following endorsement: No. 1155. V. M. West *vs.* W. L. Cabell *et al.* Bill of exceptions No. 1. Filed Febr'y 27, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

42 In the Circuit Court of the United States (5th Circuit), Northern District of Texas, at Dallas.

V. M. WEST
vs.
W. L. CABELL *et al.* } No. 1155.

Be it remembered on the trial of above entitled and numbered cause the evidence tended to prove that plaintiff's name was Vandy M. West, and that he had never been known or called James West or Bud West, and that on the 16th or 17th day of August, 1887, at the town of Weatherford, Texas, plaintiff was arrested by E. W. Johnson, then a deputy U. S. marshal under W. L. Cabell, the then U. S. marshal for the northern district of Texas, by virtue of a written warrant based upon a written complaint made by said Johnson before U. S. Commissioner F. W. Girand at Graham, Texas, said warrant being in words and figures as follows, to wit:

"UNITED STATES OF AMERICA:

U. S. Commissioner's Court, Northern District of Texas, at Graham Sitting.

The President of the United States to the marshal of the northern district of Texas, Greeting:

You are hereby commanded to arrest the body of James West, if

to be found in your district, he being charged by sworn affidavit made before me and filed against him at Graham, Texas, to wit, on the 18th day of July, 1887, that on or about the — day of ——, 1886, in the Indian country and western district of Arkansas, said above-named person did unlawfully murder John Cameron, contrary to the statutes in such cases made and provided and against the peace and dignity of the United States, and him safely keep, and have his body before me instanter, with this writ, showing how you have executed the same.

Witness F. W. Girand, U. S. commissioner, northern dis-
43 trict of Texas, at Graham, this 18th day of July, 1887.

F. W. GIRAND,

U. S. Commissioner, Northern District of Texas."

That when arrested plaintiff protested against arrest on the ground that he was the wrong man; that his name was not James West, but Vandy West, and that he was innocent of the charge, and offered to make proof of his identity if he would be permitted to go with said deputy marshal to his home, at Mineral Wells, Texas, distant 20 miles from Weatherford, which being refused he sent a telegram to G. H. and J. W. Snyder, of Georgetown, Texas, as to his identity and character, but said Johnson would not wait at Weatherford for a reply, but carried plaintiff, ironed, against his consent to Graham, Texas, a distance of 60 miles through the country, in a hack, and there lodged him in the jail of Young county, which was filthy and lousy, where he remained from the 17th or 18th of August, 1887, to the 5th or 6th of September, 1887.

After lodging plaintiff in jail said Johnson, deputy marshal, notified verbally said Girand, commissioner, of the arrest on the same day. On the next day said U. S. commissioner issued a subpœna for William Sturdevant, "on whose information principally the complaint was made by said Johnson" on which said warrant was issued, said Sturdevant residing 60 miles from Graham, at Henrietta, Texas; placed said subpœna in hands of said Johnson same day.

It was not executed, but said Johnson left Graham (where he resided) in a day or two thereafter and went West in the execution of process in a civil suit and was gone about one week, and upon his return an attachment for said Sturdevant was placed in his hands, which he took to Henrietta and failed to execute, because he found said Sturdevant too sick to travel, but he promised to
44 come as soon as able.

He then returned to Graham and took a second trip West into the counties of Jones and Haskell, attending to said civil business, and while absent said Sturdevant, on the first day of September, 1887, appeared before said Girand, and at Girand's request visited plaintiff in jail, and then went before said Girand and made a sworn statement that plaintiff was not the West who killed John Cameron in the Indian country, whose description witness had given E. W. Johnson. Upon the return of said Johnson to Graham, September —, 1887, said Commissioner Girand directed said Johnson to release

plaintiff, which was then and there done, that being the first time plaintiff had been carried before the commissioner.

No order was ever issued by said commissioner for the commitment of plaintiff other than the warrant above set out and the verbal order of said commissioner given to Johnson at the time he reported the arrest to hold said prisoner until he, the commissioner, was ready to try him.

The evidence tended to prove that plaintiff was not brought before the commissioner on September 1st, 1887, and discharged on account of the absence of E. W. Johnson, deputy marshal. Evidence also tended to show that plaintiff bore a good character for peace for several years before his arrest, and that he was not the murderer of John Cameron.

The evidence tended to prove that in making the complaint said E. W. Johnson acted upon the information received from Sturdevant and obtained from the tax books at Palo Pinto and the sheriff of Palo Pinto county, and that said Girand, U. S. commissioner, intended said warrant for a man named West, then in business at Mineral Wells, Palo Pinto county, Texas, whom they had never seen, and that plaintiff was the only man by the name of West at Mineral Wells, and that he came from the State of Colorado and settled there in December, 1886.

The complaint on which said warrant issued is as follows:

THE UNITED STATES OF AMERICA, }
Northern District of Texas. }

Before me, F. W. Girand, United States commissioner for the northern district of Texas, personally appeared this day Ed. Johnson, who, after being duly sworn according to law, declares upon oath that upon reasonable and credible information he believes to be correct and he charges that James West did on the — day of ——, A. D. 1886, in the western district of Arkansas and in the Indian country, unlawfully and felon-ously murder John Cameron, against the statutes in such cases made and provided and against the peace and dignity of the United States.

E. W. JOHNSON.

Sworn to and subscribed before me this 18th day of July, A. D. 1887.

F. W. GIRAND,
U. S. Commissioner, Northern District of Texas.

The proof tended to show that the description given to Johnson by Sturdevant of the West who did the murder corresponded with the personal appearance of the plaintiff, but proof showed that Sturdevant informed Johnson that he knew the murderer and that his name was James West and sometimes called Bud West. The proof also showed that plaintiff when arrested and for several months previous was doing a small grocery business at Mineral Wells, some 40 or 50 miles from Graham, and went by the name of Vandy West and by no other name.

To maintain the issue on their part the defendants introduced and read as evidence the deposition of F. W. GIRAND as follows:

46 My name is F. W. Girand; I am 56 years old, and reside at Graham, Texas; I am deputy United States clerk and commissioner of the United States circuit court for the northern district of Texas. Graham is about 125 miles by way of Weatherford from Dallas.

I have no personal acquaintance with V. M. West. The only time I ever saw him was when I discharged him from imprisonment, but at that time did not know him as V. M. West.

In July, August, and September, 1887, I held the office of United States commissioner, United States circuit clerk, and deputy United States district clerk at Graham.

I was informed by E. W. Johnson that he had located a man by the name of West near Mineral Wells who was charged with murder in the western district of Arkansas, and before he made complaint he wrote to United States marshal for the western district of Arkansas, and on receiving the marshal's reply to his letter he made complaint charging West with murder, and I issued a warrant of arrest for James West on said complaint on the 18th day of July, 1887.

Johnson made complaint against James West. The warrant was issued against James West. The only knowledge I had of the charge against West was what was told me by E. W. Johnson from letter or letters shown me by him that he had West located at or near Mineral Wells, Texas.

From my own knowledge, I did not know of any other West living at or near Mineral Wells. From the information received from Johnson, the West living at or near Mineral Wells was the one the warrant was issued for. I was first informed of his arrest by E. W. Johnson the night he arrived at Graham. He came by my house and notified me that he had arrested him and placed
47 him in jail at Graham and wanted to know if I wanted him brought before me the next morning. I informed him that I did not; that there were no witnesses to go into an examination of the case, and it was a case in which a commissioner could not fix or take a bond; that I would issue subpœnas for the witnesses and would hear the case as soon as they arrived.

There was some delay in getting the witnesses. I issued subpœnas for the witness- the next day after West was placed in jail, but from some cause the witnesses did not appear, and I issued an attachment for them.

The plaintiff West was discharged by my order. He was never in jail after I directed him to be discharged. He was turned loose in my office.

On cross-examination the witness testified:

He was never brought before me until the day he was discharged for reasons stated in direct interrogatory.

He was detained in jail by virtue of a warrant of arrest in the hands of E. W. Johnson. I gave Johnson the subpœnas for the

witnesses the next day, but cannot say where he went. It is true that Wm. Sturdevant, one of the witnesses for whom the subpœna and attachment was issued, came to Graham about the 1st of September, 1887, and that Deputy United States Marshal E. W. Johnson was not here. Sturdevant was in a great hurry to get away, and I informed him that I could not have West brought out for trial without the marshal, and Sturdevant said he would go to jail and see if he could identify West. He returned to my office and stated that he could not identify him as the man who committed the
48 murder. I then swore him and took down his statement and discharged the witness.

The plaintiff was released on the 5th day of September, 1887. He was not released before because the deputy United States marshal was not here and I did not consider that I had authority *or* direct any one else to bring him before me to be discharged.

The said deputy marshal Johnson did not insist on holding him after I directed him to bring him before me to be discharged, that I remember of.

I put the name James West in the warrant of arrest because James West was the man complained against.

And to further maintain the issue on their part the defendants introduced the evidence of E. W. JOHNSON as follows:

In the year 1887 I was deputy under W. L. Cabell, then United States marshal for the northern district of Texas. I was then stationed at Graham, Texas, and was the only deputy marshal stationed in that part of the district. My territory included the counties Palo Pinto and Parker on the east and extended through the entire Pan Handle to the line of New Mexico on the west, and north through the Indian country to the State line of Kansas.

In the spring of 1887 I met William Sturdevant, who resides at Henrietta, Texas, about 60 miles from Graham, and Sturdevant then informed me that James West, sometimes called Bud West, who had killed John Cameron in the Indian Territory in 1886, was at or near Mineral Wells, Palo Pinto county, Texas; that he, Sturdevant, had seen West at Mineral Wells a short time before that. Sturdevant then gave me a personal description of the West who killed said Cameron. I then wrote to the United States marshal of the western district of Arkansas and he replied that he did
49 want James West for the murder of Cameron.

Witness then went to Palo Pinto county to investigate the matter, and there investigated the tax books and submitted the description given by Sturdevant of the West who killed Cameron to James Owen, the sheriff of Palo Pinto county; that he then and there a-certained that he, plaintiff, was the only West in Palo Pinto county and in personal appearance corresponded to the description given him by Sturdevant of the James West who killed Cameron in the Indian Territory; that before he made the complaint he informed F. W. Girand of these facts; that after the warrant came to his hands he went to Mineral Wells to arrest the plaintiff; that plaintiff had gone to Weatherford with a load of wheat, and witness

went there and arrested him and carried him to Graham, where he arrived about eight o'clock in the evening; that on his arrival at Graham he turned the plaintiff over to Wallis, the jailor, who, at witness' direction, placed him in the county jail of Young county, where the Federal prisoners are kept, and that witness immediately reported the arrest and imprisonment to F. W. Girand, the United States commissioner, who then verbally directed the witness to hold the plaintiff in jail until the attendance of the witnesses could be secured; that Sturdevant had promised witness to come to Graham as soon as West should be arrested; that he immediately wrote to Sturdevant that the arrest had been made and asking him to come to Graham at once.

That next day after he had reached Graham with West witness went to Jones county to execute civil process and returned to Graham in about one week, when he received the attachment for Sturdevant and immediately went to Henrietta to execute it; but he found
50 Sturdevant too sick to travel, and therefore did not execute the attachment; that Sturdevant then promised witness to come to Graham just as soon as he could travel. On witness's return to Graham, he again went to Jones and Haskell counties to execute civil process, and returned to Graham on the 5th day of September, 1887, *whe* when and at which time Girand, the commissioner, directed witness to bring the plaintiff before him, which was promptly done, when plaintiff was promptly discharged by order of said Girand; that before witness made the complaint he had fully investigated the matter and was thoroughly satisfied that plaintiff was the man who killed Cameron in 1886. Witness had never seen plaintiff until after the warrant had issued, but had obtained a full description of him through James Owens, the sheriff of Palo Pinto county. In that section of the country it was frequently the case that men were known by other than their correct names, so much so that witness attached but little importance to the name by which a man was called.

On these facts the court charged the jury as follows:

V. M. WEST
vs.
W. L. CABELL *et al.* } No. 1155.

Charge of the Court.

GENTLEMEN: This case has been fully, fairly, and ably discussed in your hearing, the issues of fact to you and of law to the judge, and you doubtless feel that you already understand them. It is, however, my office to state the issues to you, and to give you the law applicable to the testimony that I have permitted you to receive.

51 The plaintiff's claim is that in August, 1887, the defendant Cabell, the then United States marshal of this district, acting through Ed. Johnson, his duly qualified deputy, arrested plaintiff, without authority, in Parker county, with circumstances

of wanton and oppressive harshness, and carried plaintiff to a remote county—Young—placed him in a loathsome jail, and kept him confined therein for three weeks, by all of which the plaintiff's business was broken up and destroyed and he was put to considerable actual expense, as stated in his pleadings; that his health was seriously injured; that great physical suffering was thus inflicted on him, and that the humiliation and shame of the arrest, and cruel treatment while held, gave him great mental distress; for all of which he claims damages, and is entitled to recover damages of the defendants if the arrest was without authority.

The defendants answer that the arrest was authorized by a warrant issued by F. W. Girand, a commissioner of the circuit court for this district, given you in evidence.

This warrant commands the marshal to arrest one James West, charged with the murder of one Cameron, in that portion of the Indian country embraced in the western district of Arkansas. This warrant was issued on the complaint of Ed. Johnson, who is the same man who, acting as deputy marshal, made the arrest. It was not within his duty or authority as deputy marshal to make a complaint against the plaintiff or any one. Such action he could only take in his capacity as a citizen, as an individual, and for that these defendants are not liable.

There is no proof in this case tending to show that the plaintiff was ever known by the name of James West, or by any
52 other name than V. M. West and Vandy West.

There is proof tending to show that for a number of years and in various places he has been always known by the name of Vandy West. Defendants claim, however, that the plaintiff is the man for whose arrest the warrant was issued, and it has been suggested to you in the argument of the defendants' counsel that Ed. Johnson, being the man who made the complaint, knew what man he had in his mind when he made the complaint. It is not material what was in the mind of Johnson when he made the complaint, but what was in the mind of the commissioner when he issued the warrant; and if you believe from all the evidence that the plaintiff is the man for whose arrest the commissioner issued the warrant you will find that the defendants are not liable for damages on account of the mere fact of the arrest. If, in making the arrest or in holding the prisoner, any harsher means were used than were reasonably necessary for taking and safely keeping him, considering the gravity of the charge, the defendants would be liable for any damages thereby occasioned the plaintiff.

There is no place provided for the safe keeping of United States prisoners in this district (before trial) except the county jail, which the marshals are authorized and required to use.

While United States prisoners are in the proper county jail they are, as to the condition of the jail affecting their comfort, in the care of the sheriff or jailor, and the marshal is not liable for damages to a prisoner, lawfully arrested, on account of the unsanitary or uncomfortable condition of the jail.

A marshal who makes an arrest on a warrant from a com-
53 missioner must take the prisoner before the commissioner with all reasonable dispatch, but not at unseasonable hours, and he need not and should not bring the prisoner into the actual presence of the commissioner, except as the commissioner shall direct, but should report the arrest and show that he has the prisoner ready to be produced, and thereafter observe the orders of the commissioner.

If, then, the proof satisfies you that the plaintiff is the man for whose arrest the commissioner issued the warrant and does not satisfy you that the marshal's deputy treated him with wanton or undue harshness, but shows that the prisoner was carried with a reasonable dispatch to Graham and the commissioner promptly notified thereof, you will render your verdict in favor of the defendants.

If, on the other hand, the proof does not satisfy you that the plaintiff is the man for whose arrest the commissioner issued the warrant, you will render your verdict for the plaintiff and for such amount of damages for injury to his business, to his health, and to his feelings, both mental and physical, as in your judgment the evidence in the case requires.

Plaintiff, by his counsel, excepted to the following portion of the foregoing charge, to wit:

1. "And if you believe from all the evidence that the plaintiff is the man for whose arrest the commissioner issued the warrant, you will find that the defendants are not liable for damages on account of the mere fact of the arrest."

2. "There is no place provided for the safe keeping of United States prisoners in this district except the county jail, which the marshals are authorized and required to use.

While United States prisoners are in the proper county jail
54 they are, as to the condition of the jail affecting their comfort, in the care of the sheriff or jailor, and the marshal is not liable for damages to a prisoner, lawfully arrested, on account of the unsanitary or uncomfortable conditions of the jail."

"A marshal who makes an arrest on a warrant from a commissioner must take the prisoner before the commissioner with all possible dispatch, but not at unreasonable hours, and he need not and should not bring the prisoner into the actual presence of the commissioner except as the commissioner shall direct, but should report the arrest and show that he has the prisoner ready to be produced and thereafter observe the orders of the commissioner."

And plaintiff, by his counsel, requested in writing the following charges, to wit:

You are instructed that the warrant for the arrest of James West will not authorize the arrest of Vandy M. West, though Vandy M. West may have been the party intended, he not being named or described in the warrant.

2. If through the fault of the marshal or his deputy, after plaintiff was placed in Young county jail, in not using reasonable diligence

to procure the attendance of witness Sturdevant, on whose information the warrant was procured, plaintiff was detained in jail an unreasonable lenght of time, the defendant would be liable.

If through the absence of said marshal and deputy, without a good and sufficient reason therefor, when said Sturdevant came and failed to identify plaintiff, he was held an unreasonable length of time in jail, you will find the defendants liable.

All of which being refused by the court, the plaintiff then
55 and there excepted.

All of the above charges being requested, and the exceptions reserved at the time the court delivered the charge to the jury and before they retired to consider their verdict, and plaintiff here tenders this his second bill of exceptions to said charges given and to the refusal of said charges requested by him, and prays that the same may be allowed and filed as a part of the record in this case, which is accordingly done this 24th day of February, 1890.

The counsel failing to agree as to this bill of exceptions, it is settled by the judge, and, from an examination of the respective bills submitted and from his own recollection of what transpired at the trial.

A. P. McCORMICK,
U. S. Dist. Judge.

The foregoing is endorsed as follows, to wit: No. 1155. V. M. West *vs.* W. L. Cabell *et al.* Bill of exceptions No. 2. Filed Feb'y 27th, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

56 *Prayer for Reversal.*

To the Supreme Court of the United States:

Vandy M. West comes now and says that in the record and proceedings, as also in the rendition of the judgment of a plea in the circuit court of the United States for the northern district of Texas, between Vandy M. West, as plaintiff, and the said Wm. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, as defendants, manifest error hath happened, to the great damage of the said Vandy M. West, and the said V. M. West has therefore sued out a writ of error, that the record and proceedings may be sent to the Supreme Court of the United States, to the end that error may be corrected and full and speedy justice done: Now, therefore, the said Vandy M. West, as plaintiff in error, humbly prays for the correction of such error and for reversal of said judgment, and thus will ever pray.

I. W. STEPHENS,
Attorney for Plaintiff in Error, Vandy M. West.

The foregoing is endorsed as follows, to wit: Vandy M. West, pl'ff in error, *vs.* Wm. L. Cabell *et al.*, d'f't- in error. Prayer for reversal. Filed M'ch 31, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

57 Know all men by these presents that we, Vandy M. West, as principal, and S. M. Graves and Martin Hart, as sureties, are held and firmly bound unto Wm. L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell in the full and just sum of three hundred (300.00) dollars, to be paid to the said William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of March, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a term of the circuit court of the United States in and for the northern district of Texas, begun and held 2nd Monday in January, A. D. 1890, in a suit depending in said court between Vandy M. West, of the one part, and William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, of the other part, a final judgment was rendered against the said Vandy M. West, and the said Vandy M. West having obtained a writ of error thereto, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said William L. Cabell, James Moroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

58 Now, the condition of the above obligation is such that if the said Vandy M. West shall prosecute said writ of error to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

VANDY M. WEST. [SEAL.]
S. M. GRAVES. [SEAL.]
MARTIN HART. [SEAL.]

Approved by—
A. P. McCORMICK,
U. S. Dist. Judge.

March 4th, 1890.

Sealed and delivered in the presence of—
——— ———.

STATE OF TEXAS, }
County of Palo Pinto. }

Before me, the undersigned authority, this day came S. M. Graves, who, being by me duly sworn, says on oath that he is a resident and land owner within the State and is worth at least the sum of three hundred dollars over and above all his liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under execution.

S. M. GRAVES.

Sworn to and subscribed before me this 11th day of March, 1890.
[SEAL.] JAS. T. DANIELS,
Notary Public.

STATE OF TEXAS, }
County of Palo Pinto. }

Before me, Jas. T. Daniels, a notary public within and for the county and State aforesaid, this day came Martin Hart, who, being duly sworn, says on oath that he is a resident and land owner within this State and is worth at least the sum of three hundred dollars over and above all his liabilities which he owes or has
59 incurred and exclusive of property exempt by law from levy and sale under execution.

MARTIN HART.

Sworn to and subscribed before me this 11th day of March, 1890.
[SEAL.] JAS. T. DANIELS,
Notary Public.

The foregoing is endorsed as follows, to wit: Filed M'ch 31st, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

60 THE UNITED STATES OF AMERICA:

To William L. Cabell, James Maroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court of the northern district of Texas, wherein Vandy M. West is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety.

A. P. McCORMICK,
U. S. Dist. Judge.

60½ [Endorsed:] Filed M'ch 31, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

We acknowledge notice and accept service of the within citation in error.

This March 28th, 1890.

W. L. CRAWFORD &
A. T. WATTS,
Att'ys for Within-Named Defendants, W. L. Cabell et al.

61 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Vandy M. West, plaintiff, and William L. Cabell, James Maroney, Philip Sanger, C. M. Terry, E. M. Tillman, J. C. Bogel, and Frank M. Cockrell, as defendants, a manifest error hath happened, to the great damage of the said Vandy M. West, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville Weston Fuller, Chief Justice of the said Supreme Court, the 14 day of March, in the year of our Lord one thousand eight hundred and ninety.

J. H. FINKS,
Clerk of the Cir. Court of the United States,
By CHAS. H. LEDNUM, *Deputy.*

Allowed by—
A. P. McCORMICK,
U. S. Dist. Judge.

[Endorsed:] Filed M'ch 31, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

62 *Assignment of Errors.*

To the Supreme Court of the United States, October Term, 1890.

VANDY M. WEST, Plaintiff in Error,
vs.
W. L. CABELL *et al.*, Defendants in Error.

Plaintiff in error, by his attorney, comes and says that manifest error has intervened to his prejudice in the record and proceedings as also in the rendition of the judgment of the circuit court of the United States for the northern district of Texas in the above-entitled cause, in this, to wit:

First. There is error in this, to wit:

On the trial of said cause defendants in error, to justify the arrest of plaintiff, whose name was Vandy M. West, and who had never been

known by any other name, under a written warrant commanding the arrest of James West for the murder of John Cameron in the Indian country, were permitted, over the objections of plaintiff, to offer oral testimony in substance as follows, to wit, tending to show that said warrant was issued for the arrest of the plaintiff, though by a wrong name, and that E. W. Johnson, who made the affidavit for the warrant, had made inquiries from different sources concerning the identity of plaintiff with the West who was charged with the commission of murder in the Indian country, and that the commissioner upon said complaint issued the warrant in the name of James West, but intending it for the arrest of plaintiff, — objecting to the introduction of said evidence on the ground, first, that defendants' pleading would not justify it; second, that, the suit being for actual damage only, proof of intention of commissioner was not admissible; third, because it would not be competent, the
63 warrant commanding the arrest of James West, to show by parol testimony that plaintiff, who bore another name, was intended by the commissioner issuing it; which objections were by the court overruled and said testimony introduced; to which plaintiff excepted at the time, as appears from his bill of exceptions No. 1.

Second. There is error in this, to wit:

The court erred in the matter of law in charging the jury, among other things, as follows: "And if you believe from all the evidence that the plaintiff is the man for whose arrest the commissioner issued the warrant, you will find that the defendants are not liable for damages on account of the mere fact of the arrest," and in refusing to charge the jury to the contrary, as requested by plaintiff, as follows: "You are instructed that the warrant for the arrest of James West will not authorize the arrest of Vandy M. West, though Vandy M. West may have been the party intended, he not being named or described in the warrant," the court holding and instructing the jury by above instructions, taken in connection with the rest of the charge set out in bill of exceptions No. 2, as matter of law, that defendants could justify the arrest of plaintiff under a written warrant commanding the arrest of James West for the murder of John Cameron in the Indian country, provided the commissioner in issuing the warrant intended to have plaintiff arrested, though plaintiff was the wrong man and not named nor described either in the warrant or complaint, and though his name was Vandy M. West and not at any time called or known as James West, and though he was wholly innocent of said charge; all of which will more fully appear from bill of exceptions No. 2.

Third. There is error in this, to wit:

64 The court erred in matter of law in charging the jury as follows: "While United States prisoners are in the proper county jail they are, as to the condition of the jail affecting their comfort, in the care of the sheriff or jailor, and the marshal is not liable for damages to prisoner- lawfully arrested on account of the unsanitary or uncomfortable conditions of the jail."

Fourth. There is error in this, to wit:

The court erred in matter of law in charging the jury as follows:

"A marshal who makes an arrest on a warrant from a commissioner must take the prisoner before the commissioner with all possible dispatch, but not at unreasonable hours, and he need not and should not bring the prisoner into the actual presence of the commissioner except as the commissioner shall direct, but should report the arrest and show that he has the prisoner ready to be produced, and thereafter observe the orders of the commissioner."

Applying this principle to the facts, the court further charges:

If, then, the proof satisfies you that the plaintiff is the man for whose arrest the commissioner issued the warrant and does not satisfy you that the marshal's deputy treated him with wanton or undue harshness, but shows that the prisoner was carried with reasonable dispatch to Graham and the commissioner promptly notified thereof, you will render your verdict in favor of the defendants."

Fifth. There is error in this, to wit:

The court erred in refusing the following instruction to the jury requested by plaintiff:

"If, through the fault of the marshal or his deputy, after plaintiff was placed in Young county jail, in not using reasonable diligence to procure the attendance of witness Sturdevant, on whose
65 information the warrant was procured, plaintiff was detained in jail an unreasonable length of time, the defendants would be liable."

Sixth. There is error in this, to wit:

The court erred in refusing the following instruction to the jury requested by plaintiff:

"If, through the absence of said marshal and deputy, without a good and sufficient reason therefor, when said Sturdevant came and failed to identify plaintiff, he was held an unreasonable length of time in jail, you will find defendants liable." And the record and proceeding aforesaid, together with a prayer for reversal, are herewith presented to the Supreme Court of the United States, with a writ of error sued out by said Vandy M. West to such effect; wherefore plaintiff in error prays that the errors in the record and proceedings in above cause may be considered and corrected and the judgment rendered in said cause against plaintiff on 20th day of February, 1890, in said circuit court of the United States for the northern district of Texas, be reversed, annulled, and held for naught, and that he be restored to all things which he has lost by occasion of the said judgment.

I. W. STEPHENS,
Att'y for Vandy M. West, Plaintiff in Error.

The foregoing is endorsed as follows, to wit: Vandy M. West, pl'ff in error, *vs.* Wm. L. Cabell *et al.*, def't- in error. Assignment of errors. Filed M'ch 31st, 1890. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

66 *Certificate of the Clerk.*

I, J. H. Finks, clerk of the circuit court of the United States in and for the fifth circuit thereof and the northern district of Texas, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record in cause numbered 1155, of V. M. West, plaintiff, *versus* W. L. Cabell *et al.*, defendants, lately pending in said court, at Dallas, Texas, except that the original writ and citation in error are included in the transcript instead of copies thereof.

The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.

In testimony whereof I have hereunto affixed the seal of said court, at Dallas, Texas, and the signature of the clerk thereof, this the 15th day of September, A. D. 1890.

J. H. FINKS,
Clerk of said Circuit Court,
By CHAS. H. LEDNUM, *Deputy.*

67 In Supreme Court of the United States.

VANDY M. WEST
vs.
W. L. CABELL *et al.* } No. 1416.

It is hereby admitted and agreed that wherever the name John D. Norry appears in the record in above cause the same is a clerical error and should be John D. Harry instead of John D. Norry, and consent is hereby given that this error in the record may be corrected

This Dec. 31st, 1890.

W. L. CRAWFORD,
Att'y for Def'ts.
W. H. H. MILLER,
Attorney General.
I. W. STEPHENS,
Att'y for Pl'ff.

[Endorsed:] No. 1416. Vandy M. West *vs.* W. L. Cabell *et al.*

68 In Supreme Court of the United States.

VANDY M. WEST, Pl'ff in Error,
vs.
W. L. CABELL *et al.*, Def'ts in Error. } No. 1416.

We, the parties, plaintiff and defendant in above suit, hereby agree that wherever the name John D. Norry appears in the transcript of the record filed in said cause it is a clerical error and should be John D. Harry, and we do hereby authorize and direct the clerk of

said court to correct the said transcript by erasing the name John D. Norry and writing in lieu thereof the name John D. Harry.

W. H. H. MILLER,
Attorney General.
VANDY M. WEST, *Pl'ff,*
By I. W. STEPHENS, *Att'y.*

69 [Endorsed:] Supreme Court U. S., 1890, October term. No. 1416. Vandy M. West, pl'ff in err., *vs.* Wm. L. Cabell *et al.* Stipulations to correct transcript of record. Filed Jan'y 6, 1891.

Endorsed on cover: Case No. 14281. N. Texas C. C. U. S. No. 870. Vandy M. West, plaintiff in error, *vs.* William L. Cabell, James Maroney, Philip Sanger, *et al.* Filed October 14, 1890.

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Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

VANDY M. WEST, PLAINTIFF IN ERROR,

VS.

WILLLIAM L. CABELL, ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

VANDY M. WEST, PLAINTIFF IN ERROR,

VS.

WILLIAM L. CABELL, ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHREN DISTRICT OF TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

I

STATEMENT.

This suit was originally filed by plaintiff in error against defendants in the State District Court of Texas, November 5th, 1887, and thence, upon application of defendants, removed into the circuit court of the United States for the Northern District of Texas, where, on 20th day of February, 1890, there was a verdict and judgment against plaintiff, from which, after his motion for a new trial was

overruled, he has prosecuted this writ of error, which was allowed ——day of March, 1890, by Hon. A. P. McCormick, United States District Judge, before whom the case was tried. The errors alleged are to the admission of evidence and to the charge of the court, the points being duly reserved at the time the evidence was admitted and the charge delivered and before the jury retired from the bar, as shown by bills of exception allowed and filed during said term of court at which said judgment was rendered.

Plaintiff's case, as made in his original petitition (R. p. 1) and more fully alleged in his amended orignal petition (R. p. 13.) filed in lieu of the original, is an action on the official bond of said Wm. L. Cabell as United States Marshal for the Northern District of Texas and against the other defendants as sureties on said bond, alleging as breach of said bond, that one E. W. Johnson, then a duly constituted deputy marshal af said district under said Cabell, falsely arrested plaintiff at Weatherford, Parker county, Texas, on 16th day of August, 1887, and carried him ironed and handcuffed sixty miles, to Graham, Texas, and there falsely imprisoned him in a fifthy jail for about 3 weeks, under and by virtue of a warrant issued by F. W. Girand, a United States Commissioner, at Graham, Texas, commanding the arrest of James West for the murder of John Cameron, in the Indian country, in the Western District of Arkansas, alleged to have been committed——day of———1886, which warrant did not command or authorize the arrest of plaintiff; and that said deputy marshal made a false return on said warrant; and defendants, by their answer, have ratified his acts and conduct. Plaintiff alleged his innocence and that his name was not James West, but Vandy West, and that he was a wholly different person, and when arrested protested against the arrest and imprisonment and offered to prove to said Johnson that he was not the person mentioned in said warrant. Plaintiff also alleged that he had been falsely detained in said jail for one week after the person on whose information said Johnson made complaint for said warrant had

made affidavit that plaintiff was not the man called for in said warrant, but a wholly different person; that when arrested he was a resident citizen of Palo Pinto county, Texas, and doing a prosperous mercantile business at Mineral Wells, Texas, a town twenty miles from Weatherford, where he had gone for his health from the state of Colorado, being afflicted with rheumatism, and had come to Weatherford in a wagon with his little boy on business, when and where he was arrested and carried away as a felon to Graham jail, and that his business was thereby broken up and his health seriously impaired; that he was confined to his bed for a month afterwards and suffered great agony both of body and mind in consequence of the imprisonment, mortification and return of his disease, from which he was recovering when arrested, alleging his damage, including loss of time, interruption of business, incidental expenses of procuring release, bodily and mental pain and suffering, at ten thousand dollars actual damages, no vindictive damage being claimed. R. p, 1 2, 13-16.

The defendants filed an answer (R p. 8) containing a general denial and alleging as a justification for said arrest that it was lawfully made under and by virtue of a legal and valid warrant issued by said commissioner upon a legal affidavit, charging plaintiff with the crime of murder in the Indian country within the jurisdiction of the circuit court of the United States for the Western District of Arkansas. R p. 8-10.

The warrant under which plaintiff was imprisoned and the complaint on which it was based are set out "haec verba" in bill of exception No. 2 (R. p. 20-22.) and said complaint, made by E. W. Johnson upon information and belief, on its face, charges James West with the murder of John Cameron in the Indian country, in the Western District of Arkansas, on the day of———1886 and the warrant, on its face, commands the arrest of James West on said charge, James West being the only person named or described in either the complaint or warrant to be arrested by virtue thereof.

The proof on the trial, as set forth in said bill of exceptions, tended to show that plaintiff had never been known or called James West, or Bud West and that he had always been known and called Vandy M West and by no other name, and that he had been arrested by E. W. Johnson, a deputy United States Marshal under W. L. Cabell, marshal of the Northern District of Texas, on 16th or 17th of August, 1887, at Weatherford, Texas, whither he had come in his wagon with a load of wheat from Mineral Wells, a town 20 miles distant from Weatherford, where he lived and was in business, going by the name of Vandy M. West and by no other name, having gone into business at said Mineral Wells in December, 1886.

That when arrested he protested against the arrest on the ground that he was the wrong man, and that his name was not James West but Vandy West, and that he was innocent of the charge, and offered to make proof of his identity, if permitted to go to said Mineral Wells with said deputy marshal; this being refused, he telegraphed to G. H. and J. W. Snyder of Georgetown, Texas, as to his identity and character, but said Johnson would not wait at Weatherford for a reply, but carried plaintiff ironed, against his consent and protest, to Graham, Texas, in a hack through the country, 60 miles distant from Weatherford, and there confined him in a loathsome, filthy and lousy jail for about three weeks, to-wit: from the 17th or 18th of August till 5th or 6th of September, 1887, when he was released without a trial. After lodging plaintiff in said jail, said deputy marshal verbally notified said Giraud, commissioner, of the fact of arrest, and on the next day said commissioner issued a subpœna for Wm. Sturdevant, who lived 60 miles distantat, Henrietta, and on whose information, principally, said Johnson made said complaint, and placed said subpœna, same day, in the hands of said deputy, who failed to execute same, but left Graham, where he resided, in a day or two thereafter, and went West to execute process in a civil suit and was gone about one week; and, upon

his return, said commissioner issued an attachment for said witness and placed same in hands of said Johnson, who went to Henrietta and finding, as he claimed, said witness too sick to travel did not execute the same, and returned with the promise of said Sturdevant, that as soon as able he would come to Graham Johnson then took a second trip West into the counties of Jones and Haskell, attending to civil business, and during his absence said Sturdevant, on September 1st, 1887, came to Graham and on that day, after looking at plaintiff in jail, went before said commissioner and made affidavit that plaintiff was not the West who murdered John Cameron, whose description witness had given E. W. Johnson. Johnson did not return till September 5th or 6th, when plaintiff was, for the first time brought out of jail before said commissioner and released by his order; that he was not brought out and discharged on September 1st, 1887, on account of the absence of said deputy marshal. No written order, other than the warrant originally issued, was ever made for the commitment of plaintiff. The evidence tended to prove also that plaintiff bore a good character for peace for several years before his arrest and that he was not the murderer of John Cameron. The evidence also tended to prove that in making the complaint said E. W. Johnson acted principally upon information received from said Sturdevant, whose description of the West who committed the murder, the proof tended to show, corresponded with the personal appearance of plaintiff, but that said Sturdevant informed said Johnson that he knew the murderer and that his name was James West, sometimes called Bud West. All of the above facts are set out in bills of exceptions 1 and 2, R p. 19 25. The defendants, to maintain the issue on their part, introduced the testimony of said Johnson and Girand to the effect that, though at the time said complaint was made and said warrant issued plaintiff was a stranger to them and they had never seen him, still from the description, as given by Wm. Sturdevant, of the West who killed Cameron in the Indian country, coupled with his statement that he

was located at or near Mineral Wells, Texas, they being unable to learn of any other West at or near Mineral Wells except plaintiff, and from the description of plaintiff given by sheriff of Palo Pinto county, said Johnson, in making said complaint, charging James West with said murder, and said Girand, commissioner, in issuing said warrant commanding the arrest of said James West, intended to have plaintiff arrested by virtue thereof, said Girand, commissioner, testifying that "from the information received from Johnson, the West living at or near Mineral Wells was the one the warrant was issued for."

This evidence on the part of defendants was admitted over plaintiffs objections, exception being reserved, and the court charged the jury, in effect, that such intention on the part of the commissioner in issuing the warrant would justify the arrest, to which exception was taken at the time. Other exceptions were also taken to charges given and refused, all of which will more fully appear from the assignments of error, which are as follows:

II

ERRORS ISSIGNED.

(SEE RECORD P. 31 to 33.)

1. There is error in this to-wit: On the trial of said cause defendants, in order to justify the arrest of plaintiff, whose name was Vandy M, West and who had never been known by any other name, under a written warrant commanding the arrest of James West for the murder of John Cameron in the Indian country were permitted, over the objections of plaintiff, to offer oral testimony in substance as follows, to-wit: Tending to show that said warrant was issued for the arrest of the plaintiff, though by a wrong name, and that E. W. Johnson, who made the affidavit for the warrant, had made inquiries from different sources concerning the identity of plaintiff

with the West who was charged with the commission of murder in the Indian country and that the commissioner, upon said complaint, issued the warrant in the name of James West, but intended it for the arrest of plaintiff, plaintiff objecting to the introduction of said evidence on the grounds, 1st, that defendant's pleading would not justify it, 2nd, that the suit being for actual damages only, proof of intention of commissioner was not admissible. 3rd. because it would not be competent, the warrant commanding the arrest of James West, to show by proral testimony that plaintiff, who bore another name, was intended by the commissioner issuing it, which objections were, by the court, overruled and said testimony introduced, to which plaintiff excepted at the time, as appears from his bill of exceptions No. 1.

2 There is error in this, to-wit: The court erred in matter of law in charging the jury, among other things, as follows: "And if you believe from all the evidence that the plaintiff is the man for whose arrest the commissioner issued the warrant, you will find that the defendants are not liable for damages on account of the mere fact of the arrest" and in refusing to charge the jury to the contrary as requested by plaintiff, as follows:

"You are instructed that the warrant for the arrest of James West will not authorize the arrest of Vandy M. West, though Vandy M. West may have been the party intended, he not being named nor described in the warrant," the court holding and instructing the jury, by above instruction, taken in connection with the rest of the charge set out in bill of exceptions No. 2, as matter of law, that defendants could justify the arrest of plaintiff under a written warrant commanding the arrest of James West for the murder of John Cameron in the Indian country, provided the commissioner, in issuing the warrant, intended to have plaintiff arrested, though plaintiff was the wrong man and not named nor described either in the warrant or complaint and though his name was Vandy M. West and not at any time called or known as James West and though he was wholly

innocent of said charge, all of which will more fully appear from bill of exceptions No. 2.

3. There is error in this, to-wit: The court erred in matter of law in charging the jury, as follows: "While United States prisoners are in the proper county jail they are as to the condition of the jail affecting their comfort in the care of the sheriff or jailer and the marshal is not liable for damages to a prisoner, lawfully arrested, on account of the unsanitary or uncomfortable condition of the jail."

4. There is error in this, to-wit: The court erred in matter of law in charging the jury, as follows: "A marshal who makes an arrest on a warrant from a commissioner must take the prisoner before the commissioner with all possible dispatch but not at unreasonable hours and he need not and should not bring the prisoner into the actual presence of the commissioner except as the commissioner shall direct but should report the arrest and show that he has the prisoner ready to be produced, and thereafter observe the orders of the commissioner." Applying this principle to the facts, the court further charged: "If then the proof satisfies you that the plaintiff is the man for whose arrest the commissioner issued the warrant and does not satisfy you that the marshal's deputy treated him with wanton or undue harshness but shows that the prisoner was carried with reasonable dispatch to Graham and the commissioner promptly notified thereof you will render your verdict in favor of defendants."

5. There is error in this, to-wit: The court erred in refusing the following instruction to the jury, requested by plaintiff: "If through the fault of the marshal or his deputy after plaintiff was placed in Young county jail in not using reasonable deligence to procure the attendance of witness Sturdevant, on whose information the warrant was procured, plaintiff was detained in jail an unreasonable length of time, the defendants would be liable."

6. There is error in this to-wit: The court erred in refusing the following instruction to the jury, requested by plaintiff: "If

through absence of said marshal and deputy without a good and sufficient reason therefor when said Studevant came and failed to identify plaintiff, he was held an unreasonable length of time in jail, you will find defendants liable."

III

POINTS OF LAW.

The first and second errors assigned present substantialy the same question of law. This question relates to the original arrest of plaintiff in error. The other errors assigned relate to his detention in jail for three weeks after the arrest. The principle involved in said 1st and 2nd assignments, which plaintiff contends was disgarded by the circuit court on the trial of this cause in the admission of evidence and in the charge to the jury, is thus stated by Mr. Bishop in his work on Non. Contract Law, Sec. 213:

"Where the officer, acting however honestly, arrests the wrong person, not being misled thereto by the person himself, it is a case of false imprisonment. And it is not otherwise though the one arrested was really the one meant, the name being mistaken in the warrant."

To the same effect is Waterman on Tresspass, Sec. 330, 331, 339.

This doctrine is fully sustained by the following cases:

Griswold vs. Sedgwick 6 Con. p. 456;

Meade vs. Haws, 7 Con., p. 332;

Scott vs. Ely, 4 Wend., p. 555;

Gurnsey vs Lovell, 9 Wend, p. 319;

Melvin vs Fisher, 8 N. H, p. 406;

Miller vs. Folley, 28 Barb., p. 630;

Cooter vs Bronson, 67 Borb., p. 444;

Scheer vs Keon, 29 Vis, p. 596 (cititing also a large number of English authorities.)

This decision approved in 64 Wis. p. 316;

Commonwealth vs. Crotty, 10 Allen., p. 403 (87, Am. D 669)

Hoskins vs. Young, 31 Am. D. p. 426 (N. C.)

In many of these cases the mistake was only in the christian name, as, for instance, Evelina for Emiline, David for Samuel, Sophia for Albertine, Myron for Charles, John R. for William; the surname being correctly given in the warrant and the person arrested being the one intended; still the arrest in each case was held to be unauthorized. To the same effect are the following Texas cases:

Hays vs. Creary, 60 Texas., 445;

Formwalt vs. Hylton, 66 Tex., 288;

Alford vs. Slate, 8 C. App., 560-4.

It is not believed that any well-considered case can be found holding to the contrary of this doctrine. The decision in Allen vs. Leonerd, 28 Iowa, 530, which seems to announce a different rule, was doubtless influenced by the Iowa Statute, reading: "The varraut must specify the name of the defendant, and if it be unknown to the magistrate, may designate him by any name." Iowa Code of 1873 (re-enacting the code of 1860,) Tititle xxv, chapter 10, Sec 4187. In line with this decision is the case of Williams vs. Tidball, 8 Pacific R., 351, arising under the Arizona Statute, which is but a copy of the Iowa Statute, and upon which, in connection with Sec. 1014 of U. S. Revised Statutes, the decision is expressly rested. Compiled Laws of Arizona. Sec. 89, Chapter 11.

Inasmuch as the Texas Statute on the subject of arrest is entirely different in this respect from that of Iowa and Arizona, these two cases are not in point; for the marshal and his deputies in executing the laws of the United States within Texas have the same power as a Texas shiriff has in executing the laws of Texas and can only arrest and imprison in Texas agreeable to the usual mode of process against offenders in said State. R. S., U. S., Sec. 788, 1014.

In the Revised Statutes of Texas, adopted in 1879, on the subject of "arrest under warrant" chapter two, Code of Criminal Procedure, adopted in 1856, may be found the following provisions:

"Art. 232. A warrant of arrest is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law."

"Art. 233. It issues in the name of the "State of Texas," and shall be deemed sufficient without regard to form if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known, if not known, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offense against the laws of the state, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature."

The first requisite in a complaint, as prescribed in Art. 236, is as follows:

"It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him."

Art. 274, is as follows: "The officer or person executing a warrant of arrest shall take the person, whom he is directed to arrest, forthwith before the magistrate who issued the warrant, or before the magistrate named in the warrant."

Art. 257 reads: "In executing a warrant of arrest, it shall always be made known to the person accused under what authority the arrest is made, and if requested the warrant shall be exhibited to him." The Constitution of Texas, Sec. 9 Article 1, "Bill of rights," reads: "The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches, and no warrant to search any place or to seize any person or thing shall is-

sue without describing them as near as may be, nor without probable cause, supported by oath or affirmation."

In the above case of Alford vs. State, the Court of Appeals of Texas, the court of last resort in the construction of the Criminal Laws of Texas, have decided that, if the warrant as issued does not properly name the accused so as to identify him, or, his name being unknown, does not give a reasonably definite description of him, it is no protection to the officer making the arrest and the person whose arrest is attempted thereunder may, by using reasonable force, lawfully resist the person attempting the arrest, though the person arrested may have been the one intended to be complained against, unless such intention appears in the face of the warrant by giving his name or same reasonable definate description of him. It has long been the rule of the common law that the citizen may lawfully resist, by the use of reasonable force, an attempted arrest under a warrant which designated him by "John Doe" or "Richard Roe," his name being unknown, and the officer relying upon facts outside of the warrant and complaint to identify him. Such a warrant is void for uncertainty. Commonwealth vs Crotty, 10 Allen, 403;

1st. Chitty's Crimina' Law, 38 and 40, 8 East, 825.

The Fourth Amendment of the Constitution of the United States, which declares that no warrant shall issue for the seizure of any person unless it particularly describes the person to be seized, seems to be conclusive of the question, especially against a federal officer. In view of this amendment and of the Constitution of Texas, it is believed that, if Texas had a statute like the Iowa and Arizona statutes, it would be unconstitutional. At all events, it seems clear that the Iowa and Arizona cases are not in point, owing to the peculiar statutes on which they rest, and that there is a long line of unbroken authority in support of plaintiff's position. It is supported not only by authority, but by reason as well. One of the main purposes in requiring a warrant to authorize the arrest of the citzen is, that he may in-

spect it to see whether or not it does authorize the officer to deprive him of his liberty, and to determine for himself whether to resist or submit. If it does not "particularly" describe him, by name or otherwise, he is not bound to submit, but may resist the arrest, for the supreme law of the land requires that the warrant shall do this. It is made a "substantial" requisite of the warrant by the laws and Constitution of Texas, as well as by the common law. If then the liberty of the citizen is of such high value that he can by force, resist an encroachment upon it, where the due process of law is not observed, it follows that if he submits to the arrest against his will it is a false imprisonment. It is impossible that he should have the right to resist and at the same time the officer a right to arrest. It is not pretended that plaintiff, by any act or word of his, misled the deputy marshal and caused him to make the arrest. It is also undisputed that the warrant under which plaintiff was arrested neither named nor attempted to describe him; it was therefore void as authority for his arrest. It commanded the arrest of James West and James West only, and it is clear from the record that plaintiff had never, at any time, borne that name, but that he had been always known and called Vandy M. West; that he bore a good character, was innocent of the charge, protested against the arrest on the ground that he was the wrong man, and offered to make proof of his identity and character at the time of the arrest. The circuit court admitted proof over plaintiff's objections tending to show that E. W. Johnson in making the complaint, and the commissioner in issuing the warrant which commanded the arrest of James West intended it for the arrest of a man living at or near Mineral Wells, Texas, supposed to be James West, but, in fact who was plaintiff, and charged the jury that such intention on the part of said commissioner would justify the deputy marshal in arresting plaintiff under the warrant, and refused an instruction requested by plaintiff to the contrary of this. If it be the law that the scope of the warrant can thus be enlarged and its meaning

changed to something entirely different from what is clearly expressed in its free by an unexpressed purpose in the mind of the commissioner, then, in order to determine the scope and validty of a warrant, the officer and citizen are no longer justified in reading and inspecting it to see what it means and whether it is regular on its face, but must go further and explore the mind of the commissioner who issued it, and find out, as best they can, what else he was thinking about when he wrote the plain and unambiguous command contained in the warrant. Such a principle would reverse the whole current of American thought on the subject of liberty. It is the law of this court, as well as of the Supreme Court of Texas, that an execution which authorizes a seizure of the property of "A" will not justify the officer in seizing the property of "B," and that such officer is liable as for breach of his official bond in taking the property of the wrong man by mistake, however honestly made. Lamman vs. Fensier, 111 U. S., p. 17, Holliman vs. Carroll, 27 Tex,, p. 27. Surely the liberty of the citizen is not of less value than his horse. It will not be contended that the evidence complained of in 1st assignment was admissible in mitigation of damages, because plaintiff sues only for actual damages, and no amount of intention or good faith can reduce the actual loss and suffering of the party wronged. See Beckwith vs. Bean, 98 U. S., p. 276; Sutherland on Damages, Vol. III, p. 732; Comer vs. Knowles, 17 Kansan, p. 441 If facts justifying the arrest outside of the warrant existed they should have been alleged. Johnson vs. Riley, 13 Ga., p. 97.

The remaining errors assigned relate to the unlawfulness of the detention of plaintiff at Graham after the deputy marshal had carried him there under said warrant and lodged him in jail, where he remained incoarcerated for about three weeks by virtue of said warrant, without even being taking before said commissioner, as the warrant commanded, 'till the day of his release, to-wit: Sept 5th or 6th, 1887, though he verbally reported the fact of arrest to said commissioner immediately after placing plaintiff in said jail. By

the charge complained of in 4th error assigned, the jury were instructed, in effect, that this 3 week's detention at Graham under the circumstances stated was lawful. The warrant under which he was detained commanded the officer to bring the body of James West before the commissioner instanter, with return showing how warrant had been executed. If plaintiff had been the right man, the continued imprisonment for 3 weeks after the writ had performed its office—after return day—would have been without authority of law. It is the duty of the marshal or his deputy to bring the prisoner before the commissioner forthwith, and if he holds him in custody thereafter, it should be virtue of a written commitment from the commissioner He can not lawfully detain a prisoner under a verbal order of the commissioner

Expate Watkins, 7 Peters, p. 568,

U. S vs. Harden, 10 F R , 802; James V. S., 80 N. C., 370.

U. S. vs. Tureand, 20 F. R , 621.

The record tends to show that this imprisonment of plaintiff was protracted on account of the negligence of the deputy marshall. His only excuse for neglecting for one week to execute process placed in his hands for the witness on whose information he made complaint and procured warrant was, that he was attending to civil business. Likewise, his excuse for being absent another week after said witness came and pronounced plaintiff the wrong man was a second trip from home attending to said civil business. In consequence of his second absence plaintiff had to remain in jail about one week before he could be brought out to be discharged, and on account of his failure to execute subpoena his imprisonment was probably protracted over two weeks. Can the marshal be excused for treating so lightly the liberty of the citizen? Plaintiff was imprisoned at the home of this deputy. Might not the marshal have sent another deputy on the civil business? Must plaintiff lie in a filthy jail for two or three weeks, after he has given full notice that he is the wrong man, to suit the convenience of the deputy marshal in the dispatch of civil

business? It sems, at least, that these matters should have been submitted to the jury, as requested by plaintiff. That the officer would be liable for such negligence seems clear.

Bishop on Non-Contract Law, Sec. 796, 210;

Frendenstein vs. McNeir, 81 Ill., 208;

Wolf vs. Perryman, 82 Tex., 112.

Wherefore plaintiff in error prays that the alleged errors may be examined and corrected and the judgment reversed and the cause remanded for a new trial.

I. W. STEPHENS,

Att'y for V. M. West, Plff. in Error.

No. 258.

FILED
JAN 26 1894
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1893.

VANDY M. VEST, *Plaintiff in Error,*

vs.

WM. L. CABELL ET AL., *Defendants in Error.*

Writ of Error to the Circuit Court of the United States for the Northern District of Texas,

AT DALLAS.

BRIEF OF DEFENDANTS IN ERROR.

A. H. GARLAND,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

VANDY M. WEST, PLAINTIFF IN ERROR.

VS.

WM. L. CABELL ET AL., DEFENDANTS IN ERROR.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, AT DALLAS.

BRIEF FOR DFFENDANTS IN ERROR.

First.—It is the contention of plaintiff in error that the court erred in admitting evidence over his objection, tending to establish that the plaintiff in error was the identical person against whom the complaint was made and for whose arrest the warrant was issued. This contention is based upon two grounds: First, that the pleading did not justify the admission of the evidence. Secondly, that the evidence constituted no defense to plaintiff's action. It will be observed by reference to the plaintiff's petition, (Rec. pp 1, 2,) that his arrest is alleged to have been "under a certain warrant, capias or other process of law which did not authorize the arrest," also setting forth the warrant, which commanded the arrest of James West. It also "alleges that said James West was and is a totally

different person from plaintiff," and also that the warrant authorized the arrest of James West only, and not the plaintiff, whose name was Vandy M. West. That he informed Johnson that his name was not James West, and that he was not the person mentioned in the warrant.

Defendants answered by general denial, and justified under the complaint.

Obviously the issue presented and denied was as to whether the complaint was made and the warrant issued for the plaintiff or some other person. If the issue had not been thus presented by the plaintiff, nevertheless it is believed that evidence would have been admissable under the general denial, for the rule is universal. at least in Texas, that the general denial throws upon the plaintiff the *onus* of proving all the material allegations in the petition, and enables the defendant to contest them in evidence.

Texas Pleading by John Sayles, Sec. 450.
Bailey vs. Hicks, 16th Tex. 222.
Altgelt vs. Emilienburg 24th Texas, 150.

In the next place, plaintiff in error, claims that the evidence did not tend to establish any defense to the action asserted in his petition. And this question which is presented by other assignments of error relating to the charges given and refused by the court, is the material one—presented by the record. Defendants in error contended, and the circuit court held, that if the complaint was made against plaintiff and the warrant was issued for his arrest, although there was a mistake in his name, that it constituted a defense to the action for false imprisonment against defendants. The information and warrant gave the name "James West" whereas the true name is "Vandy M. West." Plaintiff in error relies upon the

early cases decided in New York, and reported in 6th Cowen, 456 and 650; 7th Cowen, 332; 3d Wend, 350 and 4th Wend, 555. As appears from Gurnsey & Knight, vs. Lovell, 9th Wend, 320, these cases were decided prior to the passage of the liberalizing act of 1830, and therefore would not now be authority in that state.

In the main, this question is to be determined by the spirit and provisions of the Code of Criminal Procedure of the state of Texas, in force at the time the arrest was made. The code adopted in 1879 and still in force, contains the following provisions which are deemed sufficient for the purposes of this brief:

U.S. v Martin
17 Fed. R. 150

"Art. 26. The provisions of this code shall be liberally construed, so as to attain the object intended by the legislature, the prevention, suppression and punishment for crime."

"Art. 232. A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law."

"Art. 233. It issues in the name of "The State of Texas" and shall be deemed sufficient without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered if it be known, if not known, then some reasonably definite description must be given.

2. It must state that the person is accused of some offense against the laws of the state, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature."

"Art. 324. Magistrates may issue warrants of arrest in the following cases:

1. In all cases in which they are by law authorized by law to order verbally the arrest of an offender.

2. When any person shall make oath before such magistrate that another has committed some offense against the laws of the state.

3. In all cases named in this code where they are specially authorized to issue said warrants."

"Art. 235. The affidavit made before the magistrate, which charges the commission of an offense is called a complaint."

"Art. 236. The complaint shall be deemed sufficient without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known must give some reasonably definite description of him.

2. It must state that the accused has commited some offense against the laws of the state, naming the offense, or that the affiant has good reason to believe, and does believe, that the accused has committed such offense, etc."

"Art. 458. A capias shall be held sufficient if it have the following requisities:

1. That it run in the name of "The State of Texas."

2. That it name the person whose arrest is ordered, or, if unknown, describe him, etc."

"Art. 512. When the defendant is arraigned his name as stated in the indictment, shall be distinctly called, and unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense."

"Art. 513. If the defendant or his counsel for him suggest that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself, the style of the cause changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment."

In Martin vs. The State, 40th Texas 23-26, the court after citing several provisions of the Criminal Code, and Code of Criminal Procedure, and especially that as to how the latter should be construed, say, "With these general provisions borne in mind, we can more readily comprehend the great changes sought to be effected by them; for these rules of construction are wholly variant from, and, indeed, in conflict with the strictness of construction and the technical nicety of phraseology and circumlocution of statement which marred and embarrassed the administration of justice under the common law rules and practiced."

Applying the primary rule of construction to the provisions with reference to warrants, capiases, etc., that is, give them a *liberal construction*, so as to attain the objects and purposes of their enactment, to prevent, suppress and punish crime, the result is obvious. The name of the accused was required to be given in the warrant, or, if not known, a description of him is intended alike for the protection of the citizen and officer executing the same. It was to so identify the accused that the officer could with certainty arrest the identical person for whose arrest the warrant was intended.

In the very recent case of Cabell vs. Arnold, found in the Southwestern Reporter, Vol. 23, No. 12, which was an action for damages for illegal arrest and false imprison

ment, a complaint had been made before the United States Commissioner at Dallas, charging Arnold with the offense of robbing the United States mail carrier of the mail, a warrant was duly issued and placed in the hands of Cabell, the then United States Marshal, who was at Dallas. Cabell telegraphed to his deputy, then at Weatherford, that the warrant had been issued and placed in his hands for Arnold, and for the deputy to go to Palo Pinto County and arrest Arnold and bring him to Dallas. This was done, and on arriving at Dallas the deputy delivered Arnold to the Marshal, who still held the warrant, the contention which was successfully maintained in the trial court and Court of Civil Appeals, was that as the deputy did not have the possession of the warrant at the time he made the arrest, that it was an illegal arrest and detention, and therefore entitled Arnold to a recovery for the damages. But upon writ of error, the Supreme Court of the State reversed the judgment, holding that the arrest was legal and that Arnold was not entitled to recovery.

This and the Martin case both show the liberal construction given to the provisions of the Code of Criminal Procedure by the court of last resort in this state.

No description of West was given either in the warrant or information for the simple reason that both Johnson and Girard believed that his name was James West. From the information received and the investigation made, they believed that they had found and located, in the person of the plaintiff in error, the identical James West who had committed the murder in the Indian Territory. If they had been correct in this of course there would have been no place for any other name than "James West" in the warrant. It is an indisputable fact that these officers believed that plaintiff in error was the offender

James West, and he was the identical person that was intended in the complaint and warrant. If this had been a case against Johnson and Girard for malicious prosecution, then the inquiry might be material as to whether they had probable cause for proceding as they did. But here the naked question presented is, that although the plaintiff in error was the identical person against whom the warrant issued, was the arrest illegal because of the mistake in his name? It seems that if the code is to be construed as directed by the legislature, that there is neither substance nor shadow in the contention of plaintiff in error.

The case of Williams Tidball, et al. by the supreme court of Arizona, 8th Pacific Rep. 351, is in point, and upon similar facts, and it was there held that the plaintiff could not recover. While the case of Allen vs. Leonard, 28th Iowa, 529, is directly in point; there the name given in the warrant was "James Allen," the true name of the party was "William V. Allen," the action was for false imprisonment, the court held, "if the plaintiff was the party against whom the information was filed, and for whose arrest the warrant was issued, although there was a mistake in his name, he could not recover as for false imprison ment or for assault and battery done under the authority of the process, even if innocent of the offense charged." -X- -X- -X-

This disposes of the question as to the admissability of the evidence, as well as that relating to the charge of the court, upon the point made by the evidence correctly admitted and the refusal to give the requested instruction relating to that matter.

Again plaintiff in error contends that the court erred in giving the charge set out in his third assigned error, as follows: "While United States prisoners are in the proper county jail, they are as to the condition of the jail affect-

-X- -X- -X- Persons often change names and then assume others - going by one and another name, and it is the particular person the law wants, no wrong is done when that person is arrested, on the name at best but serves to indicate the person wanted:
6 Ro. Pr. 715 (sect 8); Bailey v Higgins 5 Harr. (Del.) 462;

And why does not the maxim, "Praesentia corporis tollit errorem nominis" apply in a case like this as well as in other cases mentioned in the books?
Bro. L. May (8th Edn.) 637-640
2 Kent (13th Edn.) 557;

ing their comfort in the care of the sheriff or jailer, and, the marshal is not liable for damages to a prisoner lawfully arrested on account of the unsanitary or uncomfortable conditions of the jail."

It is submitted that this charge is according to settled law.

Article 3006 of the Revised Statutes of Texas, provides that "sheriffs and jailors shall receive into the jails of their respective counties such prisoners as may be delivered or tendered to them by any United States Marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law." While Art. 3003, Revised Statutes of Texas, provides, "each sheriff is the keeper of the jail of his county, and he shall keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners."

Sections 1027 and 1028 Revised Statutes of the United States authorizes marshals and their deputies to commit United States prisoners to sheriffs or jailors, and it is settled law that in such cases the marshal is not liable to the prisoners for the misconduct of the sheriff or jailor.

× Randolph vs. Donaldson, 9th Cranch, 77.

× 17 Fed. R. 150 (cas.)

It is submitted that after the commitment, the prisoner was subject to the order of the commissioner, and that there is nothing in the claim that a liability accrued against the marshal on account of the delay in securing the witnesses.

It is respectfully submitted that there is no error in the record and that the judgment ought to be affirmed.

A. H. GARLAND,
ATTY. FOR DEFENDANT IN ERROR.